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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Amendment of Part 90 of the)
Commission's Rules To Provide)
for the Use of the 220-222 MHz Band)
by the Private Land Mobile)
Radio Service)

PR Docket No. 89-552
RM-8506

Implementation of Sections 3(n) and 332)
of the Communications Act)

GN Docket No. 93-252

Regulatory Treatment of Mobile Services)

Implementation of Section 309(j) of the)
Communications Act -- Competitive)
Bidding)

PP Docket No. 93-253

To: The Commission

Petition for Reconsideration
and
Petition for Clarification
by
Rush Network Corp.
of the
Third Report and Order

Rush Network Corp. ("Rush") currently holds one of the Phase I, 220 MHz, nationwide licenses. As such, Rush has an intense interest in the matters decided in the above cited *Third Report and Order (Third R&O)*. The decisions made by the Commission in the *Third R&O* directly affect the ability of Rush to be competitive with other Phase I and Phase II licensees in the 220 MHz market.

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Rush generally supports the Commission's previous actions and current proposals to add flexibility to the 220 - 222 MHz rules and regulations. Rush appreciates the difficulties in conforming operational rules between pre-auction and post-auction licensees, or said another way, pre-geographic and post-geographic licensees. The Commission's decisions, however, have a dramatic effect on the future of commercial radio services in this band. In that regard, Rush urges the Commission to reconsider or clarify issues in the *Third R&O* as suggested below.

Site Specific Licensing

The *Third R&O* provides that nationwide licensees on the 30 Phase II channels can construct and place stations in operation anywhere in the nation so long as three conditions are met.¹ Rush assumes that paragraph 36 means that site-specific licensing will not be required of these licensees. We believe, however, that the Commission is continuing to require Phase I nationwide licensees to license each site. If we are correct, then Phase I nationwide licensees are being put at a disadvantage relative to the Phase II licensees. In addition to the extra paperwork associated with site-specific licensing, Phase I licensees are facing licensing delays in deploying new stations that will not be faced by Phase II licensees. Rush notes that at paragraph 138 of the *Third R&O*, the Commission specifically granted construction flexibility to Phase I and Phase II licensees to construct fixed stations anywhere within their areas of operation subject to certain conditions. Similarly, paragraph 147 appears to exempt paging operations from site-specific licensing for both Phase I and Phase II licensees. That same flexibility needs to be granted to deployment of the basic two-way land mobile infrastructure.

¹ See, Third Report and Order at paragraph 36. The conditions are that stations be operated: 1) in accordance with the provisions of Sections 1.1301 through 1.1319 of the Rules, 2) in compliance with air safety responsibilities as outlined in Part 17.6 of the FCC Rules, and 3) in compliance with all applicable international agreements.

Rush understands that the Commission needs to be advised of the progress of a Phase I licensee in meeting the two, four, six, and ten year construction benchmarks and that may be the reason for continuing to require site-specific licensing. The reporting requirements of Section 90.725 (d) would, however, appear to be adequate to provide that notification.²

If Rush is incorrect in its interpretation of the site-specific licensing requirements for Phase I nationwide licensees, then Rush requests clarification of the Commission's licensing requirements. If Rush is correct about the site-specific requirements for basic land mobile licensing, then we urge the Commission to eliminate the site-specific licensing requirements for Phase I licensees and rely on the cited reporting requirements to update the Commission's records. Phase I licensees must have the flexibility to respond quickly to the changing market demands. Site-specific licensing impedes that flexibility.

Spectrum Efficiency Standard

Rush wishes to point out a discrepancy between the efficiency standard adopted in the Commission's "Refarming" proceeding and that adopted in the 220 MHz proceeding. In Refarming, the Commission required 4800 bits per second in a 6.25 kHz channel (0.768 bits/second/Hertz) as its mandate for equipment in the year 2005.³ The *Third R&O* requires 220 MHz licensees to meet a standard of 4800 bps in a 5.00 kHz channel (0.96 b/s/Hz) immediately.⁴ Normalizing the 220 MHz requirement to that of Refarming would reduce the required data rate to 3840 bps. Applying a consistent b/s/Hz rate between the 150 – 172 MHz

² 47 C.F.R. § 90.275(d) requires that Phase I nationwide licensees report several factors concerning construction of facilities, including, location, power and antenna height of constructed stations.

³ See Report and Order and Further Notice of Proposed Rule Making, PR Docket No. 92-235, June 15, 1995, 10 FCC Rcd 10076, at paragraph 97.

⁴ See Third Report and Order at paragraph 116 and new section 90.733(d)(2), appendix B, page B-18.

land mobile band and the 220 – 222 MHz band may enhance the potential for equipment development in both bands.

Construction Requirements

Rush fundamentally does not concur with the Commission's construction requirements. Rush believes that the market will cause construction to take place where and when it is needed. Licensees have all of the right incentives to maximize use of their channels in the normal course of business decisions. Rush recommends removing all construction requirements and letting Chairman Hundt's stated belief in the marketplace dictate construction and build out.

Absent removal of all construction requirements, Rush requests that the Commission conform certain aspects of the rules for all 220 MHz nationwide licensees. Most basically, it is unfair to require a Phase I licensee to build all licensed channels at each required location when Phase II nationwide licensees could build only one channel at unspecified locations and meet their construction requirements.⁵ This discrepancy could cause the infrastructure for a Phase I licensee to cost at least *five times* that of a Phase II licensee. In addition, presumably, once the build out requirements had been met for one channel, a Phase II licensee could disaggregate the remaining channels and the new licensees would have no build out requirements. A Phase I licensee, on the other hand, could disaggregate only with the baggage of construction requirements flowing to any disaggregated channel. Under the present rules, not only are Phase I licensees at an economic disadvantage if they keep their channels because of the five channel construction requirement, they are also at a disadvantage if they attempt to disaggregate the

⁵ Paragraph 165 of the Third Report and Order states, "...Phase II licensees should not be required, in implementing their systems, to construct and place in operation all of their authorized channels at all base station locations." This is in conflict with 47 C.F.R. § 90.725(a) which requires constructing and placing in operation a minimum of five nationwide channels for Phase I nationwide licensees.

channels.

Compounding the plight of the Phase I licensee is the very slow development of equipment for the 220 MHz band. Only two manufacturers have equipment available and neither of them can provide equipment that fully meets our performance requirements. Neither has produced acceptable portable units. Rush may be forced to construct infrastructure capable of operation on all five of its channels using equipment that cannot perform adequately just to preserve its license. Rush has invested considerable time and money in an attempt to find or to have equipment developed that will meet minimum voice and data requirements, but to no avail. Rush urges the Commission to eliminate the five channel bench mark construction requirements that could force us to build an inadequate infrastructure throughout the country while we wait for adequate equipment to be developed. Equity demands a reduction from the five channel requirement to a one channel requirement.

If the Commission cannot agree to any of the above suggestions, then a Phase I licensee should be allowed to disaggregate and/or partition, as desired, after the four year benchmark has been met. Under the current rules, after the four year bench mark has been met, the Phase I licensee can retain any constructed stations even if the six and ten year benchmarks are not met. This policy should be extended to allow any partitioned and/or disaggregated licensee to retain their licenses after the original licensee has met the four year bench mark. In addition, any constructed, partitioned and/or disaggregated station should count toward the original licensee's build out benchmarks.

Conclusion

Rush Network Corp. again takes this opportunity to compliment the Commission on its

continuing efforts to streamline procedures and to provide flexibility for 220 MHz licensees. Even with the Commission's good efforts, serious discrepancies in 220 MHz licensing policies remain that put Phase I licensees at a competitive disadvantage to Phase II and other CMRS licensees. In particular, the one channel construction requirement should be standardized among all 220 MHz licensees. In addition, Rush, for one, will come to the 220 auction with a more aggressive attitude toward acquiring additional spectrum if it is not confronted with a hybrid of licensing policies stemming from the differences between the Phase I and Phase II rules.

The 220 MHz band has been slow to develop for a number of reasons. Minimizing restrictive regulations that prevent licensees from tailoring service offerings to the needs of the customers can help make the band a success story of the future.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "KR Hughes", written in a cursive style.

Kingdon R. Hughes
President

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